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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 12th May 1955

S.R.O. 1063.—In continuation of the Election Commission's Notification No. 19/158/52-Elec.III/7682, dated the 25th May, 1953, published in the Gazette of India, Extraordinary, Part II, Section 3, dated the 6th June, 1953 (S.R.O. 1067), under Section 106 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby publishes the judgment of the Supreme Court of India delivered by it on the 2nd May, 1955 on an appeal filed before that Court by Shri Bhikaji Keshao Joshi and another against the judgment and order of the Election Tribunal, Akola, dated the 1st May, 1953, in election petition No. 158 of 1952.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 158 OF 1954

Bhikaji Keshao Joshi and another—*Appellants.*

Versus

Brijlal Nandlal Biyani and others—*Respondents.*

JUDGMENT

Jagannadhadas, J.—This is an appeal by special leave against the judgment and order of the Election Tribunal, Akola, Madhya Pradesh, dated the 1st May, 1953, dismissing the election petition filed by the appellant. It relates to the election for the Akola Constituency of the State Assembly of Madhya Pradesh which was held on the 13th December, 1951, and the result of which was notified in the Gazette on the 4th April, 1952. The two appellants are the electors of the said constituency. The first respondent was the successful candidate at the election. Respondents Nos. 2, 3 and 4 were the other three candidates who, having been validly nominated went to the polls but were defeated. The appellants filed the election petition under section 80 of the Representation of the People Act, 1951 (Act XLIII of 1951) (hereinafter referred to as the Act) for setting aside the election on various allegations. The petition was filed on the 19th April, 1952, before the Election Commission at Delhi and was admittedly one day beyond the prescribed time. The Election Commission admitted the petition after condoning the delay under the proviso to section 85 of the Act and thereupon constituted a Tribunal for the trial of the petition at Akola by notifications dated the 30th July, 1952, and 22nd September, 1952. In due course respondent No. 1 appeared and filed his written statement on the 6th October, 1952, and the petitioners filed their reply thereto on the 16th October, 1952. With reference to these pleadings, the Tribunal was of the opinion that it was advisable to frame certain preliminary

issues and to dispose of the same before entering on the trial of the case on its merits. Accordingly, nine preliminary issues were framed. These nine issues substantially cover the following questions: (1) Whether the election petition was presented by a properly authorised person. (2) Whether there was sufficient cause for presentation of the petition one day out of time. (3) Whether the petition was defective for non-joinder or certain parties as respondents. (4) whether the petition is defective for want of proper verification. (5) Whether the petition was defective for vagueness of the particulars relating to the corrupt practices set out in Schedule A thereto. The Tribunal found only the first of the above points in favour of the petitioners by a majority. But in respect of the other four points, it held against the petitioners unanimously. As a result of the adverse findings on these four points, the petition was dismissed without any trial on the merits. It is against this dismissal that the appellants have now come up to this Court on obtaining special leave.

Before dealing with the merits of the appeal, it may be mentioned that at an early stage of these proceedings before the Tribunal, an objection was taken to the composition of the Tribunal on the allegation that one of the members, Shri A. S. Athalye was not competent to be a Member thereof on account of his alleged bias in favour of the first respondent. The bias was sought to be made out by showing that shortly before the election, Shri Athalye had written a letter to the 1st respondent offering to assist him in his election campaign. On objection being taken, the Tribunal stayed its hands for a preliminary decision of that question. Meanwhile, the petitioners took proceedings in the High Court for the quashing of the constitution of the Tribunal on the above ground by means of an application under Article 226 of the Constitution. That application was dismissed after hearing both sides. Thereupon the petitioners moved this Court for special leave against the order of the High Court. But this Court declined to grant leave. Learned counsel for the appellants attempted to attack the validity of the decision of the Tribunal now under appeal on the same ground. But this having been already determined against the petitioners in the previous proceedings, we declined to allow the matter to be reopened. On the other side, the learned Attorney-General for the 1st respondent attempted to reopen before us the question as to whether the petition was presented to the Election Commission by an authorised person, which as stated above, was found against him by a majority of the Tribunal. The ground on which he attempted to reopen this question was that the finding was based on a wrong view as to the burden of proof. We were not prepared, however, to permit this finding of fact to be reopened in this appeal on special leave, irrespective of the question whether the burden of proof was rightly laid on the petitioners.

The only points, therefore, that have been argued before us are whether the view taken by the Tribunal with reference to the following questions *viz.*, (1) limitation, (2) joinder of parties, (3) verification, and (4) specification of particulars of corrupt practices in Schedule A attached to the petition, is correct and if so, whether the same entailed dismissal of the petition. The questions may be taken up one after the other.

Limitation.—As stated above, the petition was filed on the 19th April, 1952, admittedly one day beyond time. On the 28th April, 1952, the petitioners filed also an application for condonation of delay setting out the reasons for the same. In paragraphs 3, 4 and 5 thereof the circumstances under which the delay is said to have occurred were set out as follows:

> "3. The applicants were under the belief that Notice under Rule 113 of the Rules framed under the above Act was published on 5th April 1952, in the official Gazettes of the State of Madhya Pradesh. They felt therefore that their petition was duly presented within 14 days as prescribed by Rule 119. Applicants, however, learn that actually the Notice under Rule 113 was published in the Official Gazette of 4th April, 1952. It therefore appears that there was a delay of one day in the representation of the election petition. This delay occurred under the following circumstances:—
>
> 4. The applicants prepared their election petition on the 17th April, 1952. They sent the said petition with Shri P. B. Gole, Senior Advocate, Akola, with a written authority to present the petition through any person of his choice at Nagpur on the 18th April. They also sent with Shri Gole Rs. 1,000 for being deposited in the Government Treasury at Nagpur as required by Sec. 117 of the Act and to obtain Treasury receipts for security of costs to be filed with petition. The

applicants were under the belief that an officer must have been appointed by the Election Commission under Section 81 of the Act to whom election petitions could be represented for the State of Madhya Pradesh at Nagpur. Accordingly Shri Gole left Akola for Nagpur by the 1 Down Nagpur Mail, reaching Nagpur at about 9-30 A.M. on 18th April, 1952.

5. Mr. Gole caused the deposit of Rs. 1,000 security for costs to be made in the Government Treasury at Nagpur through Mr. Sidhaye, Advocate, Nagpur, and obtained the necessary Government Treasury receipt on the 18th April, 1952. He then made enquiries about the officer who may have been appointed to receive the election petitions. He consulted R. S. Rangole, who was attached to the Election Office at Nagpur. On enquiries Shri Gole learnt that there was none at Nagpur, who was authorised to receive election petition under the Act. Under these circumstances Shri Gole booked a seat in the Night Plane for Delhi and flew to Delhi on the 18th and reached there on the morning on 19th April, 1952. On 19th April Shri Gole caused the petition to be presented to the Secretary to the Election Commission."

The explanation thus furnished was accepted by the Election Commission as appears from the intimation to the petitioners by letter dated the 30th July, 1952. The Tribunal was of the opinion that notwithstanding the order of the Election Commission condoning the delay and admitting the petition, it was free to reconsider the question by virtue of the powers vested in it under section 90(4) of the Act. In this view it went into the merits of the explanation furnished and came to the conclusion that the petitioners were negligent and that the delay, even of one day, could not be condoned. It accordingly held that the petition was liable to be dismissed as barred by time. Now, apart from the merits of the sufficiency of the cause for delay, the question as to whether, notwithstanding the condonation of the delay by the Election Commission, it was open to a Tribunal to reconsider the matter by virtue of section 90(4) of the Act, is now covered by the decision of this Court reported in Dinabandhu *v.* Jadmoni (1)—It was therein held that it was not open to the Tribunal to reconsider the matter in such a case. The conclusion of the Tribunal, therefore, on this point cannot be maintained. The learned Attorney-General attempted to argue that the decision of this Court referred to above was obiter as regards the legal point and required further consideration. But we were not prepared to permit that question to be reopened. We were also not satisfied that there was any adequate reason for the Tribunal to interfere with the view taken by the Election Commission condoning the delay of one day on the explanation furnished to it. This explanation has not been found, even by the Tribunal, to be false.

Joinder of Parties.—The objection as to joinder of parties arises as follows. Three persons by name Shri Sohoni, Shri Kulkarni, and Shri Kothkar were nominated as candidates at the election. Their nominations were found to be in order on scrutiny by the Returning Officer. But within the time allowed, these three withdrew from the elections under section 37 of the Act. The petitioners, while they impleaded as respondents the three unsuccessful candidates who went to the polls, did not implied these three persons. The view taken by the Tribunal was that these were also necessary parties and that their non-joinder rendered the petition liable for dismissal. In support of their view, the Tribunal relied upon section 82 of the Act which is as follows:

> "A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

(1) (1955) I.S.C.R. 140.

It has been argued before us that this view is erroneous and that persons who filed their nominations and who withdrew from the contest within the prescribed time in spite of their nominations having been found to be in order on scrutiny by the Returning Officer, cannot be said to fall within the category of "candidates duly nominated at the election". In support of this contention two decisions Sitaram *v.* Yograjsing (2) and Sheo Kumar *v.* V. G. Oak (3) have been cited. On the other side the case in Mohammad Umair *v.* Ram Charan Singh (4) was brought to our notice in support of the view taken by the Tribunal. These three decisions have treated the decision of the question as depending on a construction of the phrase "at the election" in section 82 of the Act. The Bombay and Allahabad cases hold that this phrase confines the necessary parties under this section to those who were candidates for the actual poll, while the Patna High Court takes

the view that the phrase "at the election" has no such limiting significance. It appears to us to be unnecessary and academic to go into this judicial controversy having regard to the decision of this Court in Jagan Nath *v.* Jaswant Singh (5). If we were called upon to settle this controversy, we would prefer to base the decision not on any meticulous construction of the phrase "at the election" but on a comprehensive consideration of the relevant provisions of the Act and of the rules framed thereunder and of the purpose, if any, of the requirement under section 82 as to the joinder of parties other than the returned candidate. We are, however, relieved from this since it has been decided in Jagan Nath *v.* Jaswant Singh (5) that even if any of the necessary parties other than the returned candidate has not been impleaded, the petition is not liable to be dismissed *in limine* on that sole ground but that it is a matter to be taken into consideration at the appropriate stage with reference to the final result of the case. In view of this ruling the decision of the Tribunal on this point also cannot be maintained.

(2) A.I.R. 1953 Bombay 293;

(3) A.I.R. 1953 All, 633;

(4) A.I.R. 1954 Patna 225;

(5) 1954 S.C.R. 892.

Verification.—The view taken by the Tribunal on this question is based on section 83(1) of the Act which is as follows:

> "An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings."

The relevant provision in the Civil Procedure Code referred to herein is Order 6, Rule 15, clauses 2 and 3, which are as follows:

> "(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
>
> (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

In the present case the verification of the petition as well as the schedule of particulars of corrupt practices are each signed by both the petitioners and there is now no dispute about it. The verification clause in the petition is as follows:

> "The above-named applicants hereby affirm that the contents of the above petition are true to information received from the press reports and several other electors and believed by them to be true.
>
> Signed and verified at Akola on ".

The verification clause relating to the particulars of corrupt practices in Schedule A is as follows:

> "The above-named applicants affirm that the contents in this schedule are true to information received and believed by us to be true.
>
> Signed and verified at Akola on ".

In the view of the Tribunal there were two defects in these verification. They do not refer to any numbered paragraphs nor do they bear the dates on which they were signed. In the view of the Tribunal the petition was liable to dismissal for non-compliance with the specific provision in the Act in this behalf. That the verification neither in the petition nor in the Schedule of particulars bears any date is not disputed. But it is contended that the view taken by the Tribunal in so far as it was of the opinion that the verifications do not refer to any numbered paragraphs is unsustainable. It is pointed out that the statements in the verification were clearly meant to convey that the various allegations in the petition and schedule were, in their entirety, based on information and belief. It is urged, therefore, that there was no scope and hence no need to specify which were based on personal knowledge and which upon information. We agree with this contention. It is to be noticed that a verified pleading is different from an affidavit which, by virtue of Order 19, rule 3, is specifically required to be confined to such facts as the deponent is able of his own knowledge to prove (except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated). But

there is not—and in the nature of things there cannot be—any such limitation for pleadings. Hence it became necessary in the verification of a pleading to demarcate clearly between the two. The allegations in the petition in this case purport to be used only on information. Since the verification clauses refer to the entirety of the petition and the attached schedule, absence of enumeration of the various paragraphs therein as having been based on information cannot be considered to be a defect. The verifications are accordingly defective only as regards the requirement of the dates thereof. The question is whether the petition is liable to dismissal on this ground. Though there may be cases where the date of the pleading and the verification may be relevant and important, it would be a wrong exercise of discretionary power to dismiss an application on the sole ground of absence of date of verification. In such a case the applicants should normally be called upon to remove the lacuna by addding a supplementary verification indicating the date of the original verification and the reason for the earlier omission.

Particulars of corrupt practices.—The objection is based on section 83(2) of the Act which is as follows :

> "The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

The objection is that the particulars of the instances furnished in Schedule A to the petition are all of them vague and not in compliance with the above provision. The list of particulars is as follows :

"Schedule 'A'.

List of particulars of instances referred in the accompanying petition.

1. That in the month of December, 1951, respondent No. 1 has been to the the premises of Akola Shree Gurudwara, where the Local Sikh Community had assembled to listen to the recitation of the holy book "Granth Saheb" on the 7th day of the death of daughter of one Sardar Suratsingh. At this meeting respondent No. 1 canvassed for votes for himself and paid Rs. 201/-, apparently as donation to the Gurudwara, but really as gift for inducing the Sikh Community in the Akola Constituency in general and the Sikhs assembled in particular to induce them to vote for himself at the ensuing election. Respondent No. 1 was guilty of bribery within the meaning of that term in section 123 of the Representation of People Act.

Similar instances of giving illegal gratifications for securing votes of respective groups are—

(a) Donation to Hariharpeth Akhada ;

(b) Payment to Panch-bunglow Committee of Bhagis of Old City.

(c) Donation to Bhaji Bazar Association.

(d) Distribution of blankets and saries and money to voters.

2. At the instance of respondent No. 1 a meeting of workers in Berar Oil Industries—a concern of Birla, was called by its manager on the eve of the election and they were threatened to vote for respondent No. 1 on pain of losing their service or suffer pecuniary loss, in case they did not vote for respondent No. 1. The poster of the rival candidate affixed on the post-office within the premises of the Berar Oil Industries was removed and stolen away.

3. Respondent No. 1 caused groups and sections of castes and communities, such as Dohara, Lohara, Narwaries, Muslims, Rajasthunies, Bhagies, to issue appeals stating that resolutions were passed for voting for respondent No. 1, coercing the voters by threats etc., to vote for respondent No. 1 and openly canvassing on communal and caste lines and using under influence.

4. Issuing pamphlets and handbills without names of printer or publisher.

5. At the time of counting votes in Polling Station No. 53, several folded bundles amounting to about 20 in number, of ballot papers were found in the ballot box of respondent No. 1, when it was opened for

counting votes. This was noted by the Returning Officer. Each bundle consisted three or more than three ballot papers, folded together. Obviously each of the bundle of these ballot papers were put in the ballot box by one person, as the ballot papers put in the ballot box by different voters could not automatically fold themselves into a compact bundle in the ballot box. The ballot papers issued to voters were not put in the box by the voters themselves, but were illegally brought back by the voters and handed over to persons working for and on behalf of respondent No. 1 on payment of illegal gratification. These ballot papers thus collected were bundled together and put in the ballot box by persons working for and on behalf of respondent No. 1 by taking illegal gratifications. This was done on 31st December, 1951, at Chandur by persons with the connivance of respondent No. 1.

6. False personation of several dead voters and voters absent in Pakistan has taken place in Ward No. 12 and 15.

7. The respondent No. 1 resorted to false propaganda. His man announced on loud speakers from place to place that rival candidate Dr. Joglekar was of the caste and party of Godse, the murderer of M. Gandhi and a vote for him was a vote for Gandhi's Murderer. Another false propaganda was that Dr. Joglekar was Mishra's man, supported by Mishra's money. Lectures for respondent No. 1 in public meetings, including respondent No. 1 have freely made those false defamatory and malicious statements against Dr. Joglekar, the rival candidate and thus prejudiced the prospects of Dr. Joglekar's election. Personal character and conduct of Dr. Joglekar was also falsely attacked, thus prejudicing his prospects of election.

8. Voters were carried in hired carts at many polling stations, particularly at Kapshi Polling Station. This was arranged by persons working for and on behalf of respondent No. 1 at his expense and connivance. A written objection for police enquiry was given at Kapshi and one in Riffe Range area.

9. Respondent No. 1 spent lacs of rupees over his election transgressing the prescribed limit of Rs. 6,000/. He has given a totally untrue return of election expenses. This is in contravention of law.

10. Mohota Mills released workers and paid them for canvassing work for respondent No. 1 on polling day. Substitutes for these workers were engaged by the mills and they were also paid. This was done at the instance of respondent No. 1."

There can be no doubt that almost all the instances herein-above set out are extremely vague and lack sufficient particulars. Learned counsel for the appellants invited our attention to the fact that the Tribunal, while considering the question of vagueness dealt only with the instances of corrupt practices specified in paragraphs 1(a), 1(b), 1(c), 1(d), 2, 4, 5, 6, 7 and 8 and not others. He accordingly contended that, by implication, the Tribunal was not prepared to hold that items mentioned in paragraphs 1, 3, 9 and 10 were vague. He urged that at least these four items must be taken not to be vague and that there is no reason why the petitioners should not have been called upon to amend the schedule by furnishing better particulars as to the rest. He further urged that, at any rate, they were entitled to a trial in respect of these four items of corrupt practices. We cannot agree with learned counsel for the appellants that the items set out in paragraphs 3, 9 and 10 are not vague. There is no specification therein of the requisite details which the Act in terms requires. Section 83(2) requires not only what may reasonably be considered "full particulars" having regard to the nature of each allegation, but enjoins in terms that the following particulars should also be given. (1) Names of the parties alleged to have committed the corrupt or illegal practice. (2) The date of the Commission of each such corrupt and illegal practice. (3) The place of commission of each such corrupt or illegal practice. There can be no reasonable doubt that the requirement of "full particulars" is one that has got to be complied with, with sufficient fullness and clarification so as to enable the opposite-party fairly to meet them and that they must be such as not to turn the enquiry before the Tribunal into a rambling and roving inquisition. On a careful scrutiny of the list in Schedule A we are satisfied that none of the items except that which is set out in paragraph 1 of item No. 1 can be said to comply with the requirements of section 83(2). In this view of the contents of Schedule A, the contention of the learned counsel for the appellants is that even so the Tribunal should have called upon

the petitioners to furnish better particulars as regards all the other items, by virtue of the powers conferred on it under section 83(3), and in the alternative, it should have at least called upon them to substantiate the allegation in paragraph 1 in item No. 1, which was sufficiently specific and which, if made out, might have resulted in the election being set aside. On the question whether or not the Tribunal should have called upon the petitioners to amend the schedule by furnishing better particulars, the learned Attorney-General for the 1st respondent has invited our attention to the objection taken in the written-statement as regards the vagueness of the particulars and to the various orders made by the Tribunal as appears from the order-sheet of the case. In the written-statement of the 1st respondent paragraph 9 is as follows :

"9. (a) It is, further, submitted that the petition ought to be dismissed as it does not contain concise statement of material facts on which the petitions rely. Similarly the list of particulars given in the schedule or in petition are not in compliance with Section 83(2).

(b) Without prejudice to the generality of this objection, it is further submitted that para. V of petition read with para. VI(e) will show that the particulars given in Schedule relate to corrupt and illegal practices alleged to have been committed by Respondent No. 1 and by his agents and persons working on behalf of Respondent No. 1 with his connivance. Such particulars are bad in law. The applicants are bound to state the names of the persons who are alleged to have actually committed the corrupt or illegal practice.

(c) Paras. 1 and 2 of the petition allege that there was no free election by reason of general bribery and undue influence exercised by and on behalf of respondent No. 1. Similarly the allegation in para. 2 is that the coercion was the result of manipulation by or at the instance of respondent No. 1. Thus these allegations must be supported by giving the necessary particulars regarding the names, date and place of commission of corrupt or illegal practice alleged. The allegations in paras 1 and 2 of the petition are allegations of corrupt and illegal practice within the meaning of Section 123, 124 and 125 of the Act, and are not allegations of a general character which do not implicate the candidate personally.

(d) Further by way of example, para. 1 of the schedule, no names, date of the alleged practices are given. Same is the case with the allegations in paras 2, 3, 4, 5, 6, 7, 8, 9 and 10.

(e) It is for the petitioners to satisfy the Election Commission and the Tribunal that the particulars given are according to law. This has not been done and the petition, therefore, ought to be dismissed on this ground."

Now the order-sheet of the proceedings before the Tribunal discloses the following. By order dated the 16th October, 1952, the Tribunal decided that the case was in the first instance to be taken up for decision on the preliminary issues.

Having so decided it passed the following order.

"We call upon the parties whether they want to add by way of amendment to the pleadings on facts which they have already made, as in some of the preliminary points the question of fact is involved.

The respondents do not want to add to their pleadings on facts in respect of the above preliminary issues. The petitioners have made an application under Order VI Rule 16 C.P.C. for striking out some portion in paras 3-b and para 4-(d)(2) of the written-statement of the respondent No. 1."

On the 17th January, 1953, the Tribunal passed the following order:—

"The respondent No. 1 prays for time to amend his written-statement and to ask for particulars. In the interests of justice the time is granted. The application for amendment and for particulars to be filed five days before the date of hearing and copies thereof be given to the petitioners. The petitioners shall be ready with their replies on the date of hearing."

On the 27th January, 1953, the order is:—

> "The petitioners have filed their reply to the amendment application of the respondent No. 1. The latter has amended his application, to which there was no objection."

On the 29th January, 1953, the order is:—

> "The petitioners do not want to amend their pleadings in veiw of the amendment of the written-statement.

In view of the specific objection taken in the written-statement and the opportunities which the petitioners had for amending the petition which the above orders disclose, there is considerable force in the contention of the learned Attorney-General that the petitioners, for some reasons best known to themselves, have come forward with a somewhat irresponsible petition and that while the Court has undoubtedly the power to permit amendment of the schedule of corrupt practices by permitting the furnishing of better particulars as regards the items therein specified, there was no duty cast upon the Tribunal to direct *suo motu* the furnishing of better particulars. It is true that the petitioners in the reply that they filed to the written-statement of the 1st respondent and in answer to the objection that the particulars as to the alleged corrupt practices were vague, said as follows:—

> "The petitioners are prepared to give further particulars if the Tribunal is pleased to permit under section 83(3) of the Representation of the People Act."

This reply was filed on the 16th October, 1952, which is the very date on which the first of the above orders extracted from the order-sheet was passed. It is also true that the order dated the 17th January, 1953, shows that the respondent No. 1 at one stage, indicated an intention himself to ask for particulars. But in a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with section 83(2) of the Act was on the petitioners. While undoubtedly the Tribunal has, in our opinion, taken all too narrow a view of their function in dealing with the various alleged defects in the petition and in treating them as sufficient for dismissal, the petitioners are not absolved from their duty to comply, of their own accord, with the requirements of section 83(2) of the Act and to remove the defects when opportunity was available. They cannot take shelter behind the fact that neither the Tribunal nor the respondent No. 1 has, in terms, called upon them to furnish better particulars.

The position, therefore, on the question of compliance or otherwise of the requirements of section 83 of the Act is that (1) the verifications in the petition and schedule are defective inasmuch as the dates thereof are not specified, and (2) the schedule of the particulars consists of a number of items of which only one at best could have been taken up for inquiry by the Tribunal. But all the rest were not only extremely vague but no amendment was applied for nor was an opportunity for amendment of pleadings in general, open on two occasions, availed of. Learned counsel for the appellants urges that however this may be, there was no justification for the Tribunal dismissing the petition *in toto* and that it was bound to have called upon the petitions to substantiate the first allegation by evidence after striking out, if need be, the rest of the particulars, under the powers vested in it under Order 6, rule 16 C. P. C. On the other hand the learned Attorney-General for the respondent No. 1 urges that in such a situation it was open to the Tribunal to consider whether, taking the petition as whole and in its total effect, there was substantial compliance with the requirements of section 83. He contends that if, in exercise of its judgment, it thought that there was substantial non-compliance, notwithstanding that one out of the various items may have been specific, it was not bound to exercise its discretion in favour of the petitioners by ordering a striking out of the various items and to direct the trial of the petition to be confined to one single item which may be in order. The learned Attorney-General argues that this would be really making out for the petitioners a different petition from what they brought up before the Election Commission and that in this class of cases the Tribunal had the right and the duty to exercise great strictness in order that the machinery for setting aside elections might not be abused for the purpose of mallgning the successful candidate by levelling vague and irresponsible charges against him. While there is considerable force in this argument, we think that in a case of this kind the Tribunal when dealing with the matter in the early stages should not have dismissed the application. It should have exercised its powers and called for better particulars. On non-compliance therewith, it should have ordered a striking out of such of the charges which

remained vague and called upon the petitioners to substantiate the allegations in respect of those which were reasonably specific. We are, therefore, of the opinion that the order of the Tribunal in dismissing the petition outright was clearly erroneous Notwithstanding this opinion we would, in the normal course, not have felt called upon to interfere in this case under Article 136 after this lapse of time and at the instance of persons like the appellants before us who are mere voters having no direct personal interest in the result of the election

But there is one other circumstance in this case which we have noticed and which we feel we ought not to overlook, though in the course of the arguments the same was not brought to our notice Paragraphs 6(a), (b) and (c) of the application for setting aside the election sets out certain grounds or alleged disqualification of the returned candidate to stand for the election It is also stated therein that objections in this behalf were taken at the time of scrutiny of the nomination papers but that they were summarily over-ruled by the Returning Officer without any enquiry and that accordingly the objections to the disqualification have been raised in the application The objections are as follows.—

"6 The material facts in support of the grounds are as follows:—

(a) The election of candidate for the Madhya Pradesh State Assembly in the single member Akola Constituency was announced to be held on 31st December, 1951 Nominations were to be filed on or before 15th November, 1951, and scrutiny of nomination was due on 17th November, 1951 At this time of scrutiny objection was taken to the nomination paper of respondent No 1 on several grounds but the material grounds were that respondent No. 1 was disqualified for being chosen as and for being a member of Madhya Pradesh State Assembly under Chapter III, Section 7(d) of the Representation of the People Act, 1951 (Act 43 of 1951) That the respondent No 1 is disqualified to fill the seat under the Act, because he is the Managing Agent or Managing Director of Rajasthan Printing and Litho Works—private limited company under the Indian Companies Act He has, as a share-holder and director, interest, in contracts for supply of goods, *viz*, stationery, paper and printing materials, etc, to the State Government of Madhya Pradesh. He has also interest in contracts for the execution of works or performance of services, such as printing, etc, undertaken by the State Government of Madhya Pradesh The respondent No. 1 gets a share by way of commission on sales effected by the Limited Company. He has, therefore, by himself interest in the contracts of the company with the State Government of Madhya Pradesh.

(b) The respondent No. 1 is a partner in the firm Berar General Agency. The said firm has entered into a contract for the performance of cloth distribution on behalf of the State Government to retailers and holds a licence for the same The respondent No 1, therefore, has interest by himself in the said contract for the performance of services undertaken by the Government

(c) The respondent No 1 is the proprietor of the monthly Journal "Prawaha" and a by-weekly paper "Matru-bhumi". These publications print Government advertisements on contract basis. The respondent No 1 has, therefore, interest in the said contract for the performance of services undertaken by the State Government of Madhya Pradesh The income derived from these contracts by the respondent No 1 are noted in the private accounts of the respondent No 1 and their details are shown in the profit and loss statements filed with income tax return of the respondent No. 1 for the relevant year and current year

The sales and other details of the "Matru-bhumi" concern are noted in the private accounts of the respondent No. 1.

The objections were summarily overruled by the Returning Officer without any inquiry or any reason."

These allegations, if made out with such further details as may be necessary, might well prove serious and bring about the setting aside of the election of the returned candidate. The 1st respondent in answer to these allegations states as follows:—

"It is denied that there was any improper acceptance of the nomination paper of respondent No. 1 and in particular it is denied that any of the allegations made in paragraphs 6(a), (b) and (c) of the petition

constitute in law a disqualification of Section 7 of the Representation of People Act. Without prejudice to this it is submitted that the respondent No. 1 was not suffering from any of these disqualifications in fact on the date of the submission of the nomination paper."

Having regard to the nature of the alleged disqualification, which is substantially to the effect that the returned candidate had interest in contracts with the Government at the relevant dates, it was very necessary that the matters should have been cleared up in the enquiry before the Election Tribunal. It is not in the interests of purity of elections that such allegations of disqualification should be completely ignored without enquiry and it appears rather surprising that the Tribunal should have ignored them and exercised its powers to dismiss the petition. However reluctant we might be to interfere in a matter like this after the lapse of three years and four months and with only an year and eight months before the general elections, we feel constrained to send this matter back for due enquiry. But before doing so and in view of the delay and other circumstances that have already happened, we, in exercise of the powers which the Tribunal in the normal course might itself have exercised, direct the striking out of all the items of alleged corrupt practices set out in Schedule A excepting the one covered by paragraph 1 of item 1 *i.e.* as follows:—

"That in the month of December, 1951, respondent No. 1 had been to the premises of Akola Shree Gurdwara, where the Local Sikh Community had assembled to listen to the recitation of the holy book "Granth Saheb" on the 7th day of the death of daugter of one Sardar Suratsingh. At this meeting respondent No. 1 convassed for votes for himself and paid Rs. 201, apparently as donation to the Gurudwara, but really as gift for inducing the Sikh Community in the Akola Constituency in general and the Sikhs assembled in particular to induce them to vote for himself at the ensuing election. Respondent No. 1 was guilty of bribery within the meaning of that term in section 123 of the Representation of People Act."

The case will, therefore, go back for enquiry and trial with reference only to (1) the allegations in paragraphs 6(a), (b) and (c) of the application for setting aside the election, and (2) the allegations in paragraph 1 of item 1, in Schedule A attached to the application as set out above.

The Election Commissioner will now reconstitute an appropriate Tribunal for the purpose. The Tribunal when constituted and before proceeding to trial will call upon the petitioners to rectify the lacuna as to dates in the verification clauses in the petition and the Schedule. It is to be hoped that the fresh proceedings before the Tribunal will be disposed of at a very early date. The appeal is allowed as stated above but, in the circumstances, without costs.

(Sd.) B. K. MUKHERJEA, C. J.
(Sd.) VIVIAN BOSE, J.
(Sd.) B. JAGANNADHADAS, J.
(Sd.) T. L. VENKATARAMA AYYAR, J.
(Sd.) SYED JAFER IMAM, J.

NEW DELHI,

The 2nd May, 1955.

[No. 19/158/52-Elec.III/5848].

By order,

K. S. RAJAGOPALAN,

Assistant Secretary.

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